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IV

THE MADRAS BORSTAL BILL—(cont.)

* Mr. A. RANGANATHA MUDALIYAR :—“Mr. President, Sir, this Bill proposes to make provision for the establishment of Borstal schools for the benefit of the adolescent offenders. These offenders consist of juvenile offenders of both sexes. I am very strongly of opinion that there must be a school for girls as for boys. Section 3 of the Bill mentions that the Local Government may establish one or more such schools. I suggest, Sir, that it should read as two or more schools so that at least there may be one school for either class of offenders.

“The next point I should like to raise is this. The age of the offenders is given as from 16 to 21 years. I should suggest a lower age in the case of girls.

“Passing on to clause 4, the Government reserve to themselves the right to make rules. These rules, I submit, must be subject to confirmation by the House.

“With reference to clause 6, I should like that the powers conferred on courts by this Act should be extended to the honorary magistrates.

“I agree with the hon. Member, Mr. Narasimha Raju, that the powers of the Inspector-General of Police require to be looked into and again the powers of the police to arrest without warrant require further examination.”

* Mr. C. GOPALA MENON :—“Sir, the purpose of the Bill is to deal with cases of young persons between the ages of 16 and 21 guilty of offences punishable with imprisonment. It is an important matter and all persons interested in reformative principles in dealing with offenders so as to make them fit for the civic and industrial life of the country should welcome this measure. There are, however, some points which require the close attention of the hon. Members of this Council. The Bill confers on certain classes of courts the power of detaining adolescent offenders for a period of not less than three years. The point for our consideration is whether such delinquents should be subjected to the same penal punishment applicable to adults and whether the treatment given to them should be different and, if so, what should be the principle that should be applicable to them. The question came up for consideration before the International Prisons Conference and these are the resolutions passed in regard to the manner of dealing with young delinquents. I shall, with your permission, Sir, read out the resolutions. They were as follows:

I. Young delinquents should not be subjected to the penal procedure now applied to adults.

II. The principles that should guide the procedure applied to delinquents are as follows :—

(1) Those who are entrusted with the cognizance of the cases of young delinquents should be primarily chosen for their ability to understand and sympathize with children, and should have some special knowledge of the social and psychological sciences.

(2) They should have the assistance of probationary officers to make preliminary examination in each case, and to watch over and help those put on probation.

(3) There should be made in connection with the cases of young delinquents such examinations as will contribute to the fund of information on juvenile delinquency, and the results should be used wherever practicable to help in the disposition of the case. Medical examinations should be made only by physicians who have some special knowledge of the social and psychological sciences. The personal information obtained in these examinations shall not be made public.

(4) Whenever possible in the case of young delinquents, arrest should be avoided in bringing them before the authorities, and orders for arrest should be issued only in exceptional cases.

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(5) When necessary to detain young delinquents, the detention should not be made in quarters used for adults.

(6) In those countries where a court is entrusted with the cognizance of the cases of young delinquents—

(a) such cases should never be heard at the same session with cases of adults, and

(b) it should be the tendency in the trial of juveniles to proceed, as far as practicable, by way of conference for the good of the child, instead of contest about and over the child.

"Then follow the resolutions regarding child offenders, and I do not propose to deal with them here because there will be shortly children's courts to be established where all legal procedure connected with their trial would be dispensed with. What I am pleading for is, in the case of these young delinquents also, as far as possible legal formalities should be dispensed with, and I want to point out that the same procedure should not be applied to these young offenders as that applicable to adult offenders. Of course at the International Conference in the resolutions read out it will be seen that while the Conference was not in favour of all legal procedures being dispensed with, they accepted certain provisions of a very important character. I wish to bring to the notice of hon. Members of the House and the Government the resolutions passed there and urge that they may be considered in finally framing the Bill.

"Then, Sir, no provision is made for the recognition of organizations for the supervision and the aftercare of the young men after their release from the Borstal institutions. I wish that a provision is made in the Bill after the model of the section the Prevention of Crimes Act of 1908 and in this connexion I wish to read out from the report printed as an appendix to the Jail Committee's report. It reads:

"Important as are the constitution and management of Borstal institutions, they cannot be expected to achieve success unless their work is supplemented by suitable provision for the supervision and aftercare of the inmates of these institutions after their release. This fact has been recognized in section 8 of the Prevention of Crimes Act of 1908 which allows payments to be made out of public funds towards the expenses of a society undertaking the duty of assisting or supervising persons discharged from the Borstal institutions. Such a society has been formed in England under the name of a Borstal Association, a quasi-official body of which the Home Secretary is the ex officio President."

"What I wish to point out is that the Government should bring in a provision for bringing into existence an organization for the benefit of these discharged persons. There are certain other verbal alterations which I wish to bring to the notice of the House at this stage. I find that the words 'penal discipline' are mentioned in the Bill. On this subject, again, I wish to read an extract from the appendix to the report of the Indian Jail Committee:

"Our object is to provide in the Borstal institution a place where the offender will not be imprisoned but will only be deprived of his liberty to that degree which is necessary to ensure discipline, where he will live under strict discipline affecting his body, his mind and his character and where he will be taught an industry."

So the idea is that it is not a prison. It should be more like a school with a severe discipline and with industrial training.

"We do not intend that the Borstal institution should be anything like a prison, and as we develop in the management of Borstal institutions, I may assure the House that they will be more and more in the nature of a reforming and training institution."

This is the speech of the Home Secretary, Mr. Mackenna, when introducing the Criminal Justice Administration Act in the House of Commons. There

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is also the word 'sentence' appearing in several places in the Bill. The courts have been empowered only to detain the prisoners. So the words 'order of detention' should be substituted wherever the word 'sentenced' occurs. These are some of the alterations which can be made by the Select Committee.

"Lastly, Sir, about the treatment of juveniles connected with grave crimes. Are they to be put in jails along with ordinary prisoners under the Bill? I wish this aspect of the question to be considered.

"With these few words, I support the motion that the Bill be read in Council."

* Mr. C. V. VENKATARAMANA AYYANGAR:—"I have just one or two words to say on the motion before the House, with reference to the Discharged Prisoners Aid Society to which reference has been made by the hon. the Home Member. I have been connected with the society in my own place for about four years and I therefore have some experience of both the prisoners who return from the Borstal school and those from other prisons. The general impression is that whenever we see these people, they are found to have some capacity to do some work for which they have been trained. But unfortunately the difficulty is to find employment for all of them. It is most unfortunate that Indian society as a rule has not yet become reconciled to the fact that these prisoners when they return from these jails are fairly very good in their behaviour. And, therefore, the fact is that whenever we on behalf of the Discharged Prisoners Aid Society appeal to the various mills and offices, the general reply that we get is that there is no vacancy. I would, in dealing with this Bill, as a matter of policy appeal to the Government to see if they cannot issue a Government Order as in the case of the depressed classes and ex-sepoys asking the district authorities and others to give employment on a minor scale at least to those who are returned from the Borstal School. Unless the Government take the lead in the matter and employ some of these people at least it is impossible to expect the general public to consider these Borstal School returned boys to be reliable. One important point is that whenever we see these prisoners, as we do just a month or so before their release from the jails, they invariably complain about their being asked to go and report themselves to the Police immediately after their release. Again, the Inspector-General of Prisons is given some extraordinary powers under this Act. I would respectfully submit that wherever the Inspector-General is given these powers, it is very desirable that at least in some cases that that power may be given to the Collector of the district in which the Borstal School returned boy is living. Under the Bill it is suggested again that a committee of visitors may recommend a boy's release after six months, but the Inspector-General who has got nothing to do with the boy after his return to me, has got the power of re-taking the boy into the jail if necessary. I do not know how the Inspector-General can be expected to know anything about the general behaviour of the boy after his release. As the Secretary to the Discharged Prisoners Aid Society in my place I wish to suggest that provision should be made in the Bill enabling the Collector of the district or the Discharged Prisoners Aid Society to make a recommendation that the boy be sent again to jail. Again, Sir, I do not see any reason why the committee of visitors should wait for six months before they recommend a boy's release from the Borstal School. It may be

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that the boy belongs to a respectable family and it may be that his antecedents are good. If sufficient security is given or if the committee find it desirable to send the boy away without giving him an opportunity of mixing with boys of greater criminal propensities, there is no reason why an enabling provision should not be made. Lastly, so far as the period of three or five years is concerned, some of my hon. Friends have already said that the minimum and the maximum are not at all necessary. These things may be taken into consideration and the powers of the Inspector-General of Prisons taken away. I have absolutely nothing against the person or the office but there is a prejudice on the part of the general public that the Inspector-General is anxious to take care of these people too much not only when they are in jail but also when they are discharged. The impression may be wrong or right but it is there that the Inspector-General is anxious to get as many criminals as he can into the jail rather than out of it. That is the way the complaint is made to us every day and I therefore urge that the Discharged Prisoners Aid Society or the Collector should be enabled to exercise the power now sought to be given to the Inspector-General of Prisons."

Mr. MUHAMMAD GHOUSE MIAN SAHIB:—"While congratulating the hon. the Home Member for the introduction of the Bill, I wish to point out some of the difficulties that suggest themselves to me in the Bill as it is. We are told, Sir, that in every case when a prisoner is released from the Borstal Institute there are two or three associations to take care of him. Mention has been made of one such association by my hon. Friend, Mr. Venkataramana Ayyangar. I mean the Discharged Prisoners Aid Society. Another institution which will take care of them is the Borstal Association. I would suggest that provision is made for such associations in the Act as they are bound to create very good results."

"This Act is then made applicable under certain circumstances to prisoners, the condition being that the convicts should be between 16 and 21 and conviction must be for offences punishable with imprisonment under section 118 of the Criminal Procedure Code. The wording of the section is not quite clear. There are offences for which punishment by imprisonment is provided as an alternative. The Bill, as it now stands, makes mention only of imprisonment. We are not quite clear whether in such cases where as an alternative to transportation for a particular period, imprisonment is provided, the Act would apply. The matter must be made clear.

"Next, under section 8 of the Bill various magistrates are empowered to send prisoners to the Borstal Institute. It also encumbers them in the matter of judgment by providing that they should await the orders of the Inspector-General before such persons are sent to the Institute. That provision should, I think, be removed.

"Again in section 14 it is said that in cases where a committee goes and examines into the conduct of a particular prisoner and when it comes to the conclusion that a particular prisoner is incorrigible, he should be sent back to the prison to undergo the remaining portion of his imprisonment. We shall take a particular instance. Suppose a particular prisoner is sent to the institute and he is sentenced to five years. At the end of the sixth month the committee inquires into the matter and comes to the conclusion that the boy is incorrigible. Under section 14 he may be sent to the ordinary prison for a period of four and a half years. But in such a case the maximum

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sentence that could have been passed by a first-class magistrate would be for two years. So in this particular instance it will be found that at the end of six months the boy, if he is found to be incorrigible, is made to undergo a sentence in the ordinary jail for a longer term than would be the case in the ordinary circumstances. That provision is hard and should be removed."

* Mr. P. ANJANEYULU:—"Mr. President, Sir, the justification for this Bill lies in the fact that it intends to bring under control for purposes of reformation young men of impressionable age when they by some lapse go wrong. If that is the chief intention, I think two conditions ought to be fulfilled if the Bill should be of any use. The school to which they are sent must be so situated in its outward form that it should not have the appearance of a jail. It should be so inviting to these people that it should have nothing of the appearance of a prison. The next condition should be that the treatment within should be equally winning and will be such as to invite offenders to stay there even if they chose for a longer term than the law imposes upon them. If these two conditions are fulfilled the best intentions of the Bill will have been carried out. If they are not, better leave things as they are. In this view I should join hands with those who have already spoken on the subject that two or three provisions of the Bill require a substantial change. Rule 10 says that the Inspector-General may subject to the rules made by the Local Government, etc. I should like to suggest, Sir, that instead of the Inspector-General of Prisons it must be the local authority, who sent him to jail, in conjunction with the recommendation of the visiting committee that should decide the point and that also again with

12-30 p.m. the consent of the parents or guardians of the person who has been sent to this reformatory school.

"Again, Sir, Clause 14 (1) says: 'Where a person detained in a Borstal school is reported to the Local Government by the visiting committee of such school.' Well, on the constitution of the visiting committee largely depends the fate of the inmates of the school. Therefore, the visiting committees should be so constituted that the members thereof will inspire both the inmates and also the outside public with entire confidence: I shall not add anything more or take up the time of the House with repeating what has already been said by hon. Members. With judicious care, if proper amendments are made in the Select Committee stage, I for one will recommend this Bill."

* Mr. T. ADINARAYANA CHETTIYAR:—"I am already persuaded not to inflict a long speech on the House, and I do not want to disappoint hon. Members. The chief points in the proposed Bill have been dealt with very ably by my hon. Friends, Mr. Venkataramana Ayyangar and Mr. Ghouse Mian Sahib. So I will confine myself only to one or two general points. Sir, the Borstal system, in spite of the fact we have had an institution at Tanjore, is practically new to this part of the country. But the prison system is a fairly hardened system and the proceedings of what is known as the 'Bomde Mataram' Libel case have made the evils of the system very well known. Wherever you go, you meet with the same kind of superintendents, the same kind of hardened jailors, and other hierarchy of officials. They are trained to a certain tradition and certain manners. If the revelations of the Multan jail are in any way true, I can say with my experience as a non-official visitor of a Central Jail for nine years that these things are not

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confined only to Multan. There is a sort of hardened mentality about the officials. If the Borstal system is to thrive on its new lines, we have to go in not for a superintendent trained under the present prison system, which with all due respect to it I should call a hardened system, but for a man trained in the traditions of the system in other advanced countries like America or England, or get the proper man by sending somebody from here to be trained in the management of those institutions. The jail under this system,—I should rather not call it a jail but a sort of Gurukula—should not consist of the traditions of warders and jailors, but it ought to be a small republic, or like a hostel where they may have their own cooking and other arrangements and where a large measure of independence can be secured to the inmates. The Bill naturally lays stress upon what is called the 'licence.' Unfortunately, in the old hardened jail system, we have got what is called the 'ticket-of-leave'. Generally we know what sort of people control offenders of that stamp. The department which is responsible for the supervision of these people is not the jail department but the department of law and order, the police. Here we have to provide safeguards against the 'licence' becoming a copy of the 'ticket-of-leave'. The management of the institution should be so carefully conducted as to inspire confidence in the inmates and the public, because the police have to have a hand in the matter. The system of warders and all the hardened hierarchy ought to be replaced by a different set. It ought not to be a replica of the old prison system. The present Bill is an enabling one, the success of which would depend largely on the comprehensive rules that should be made not only as regards the internal management but also as regards licensing and the kind of people that should be sent to these institutions. The management ought to be entrusted to gentlemen with large views, to superintendents who have been trained in countries where the Borstal institutions have been a great success as in Europe or America, and not to men with mentalities hardened by the mamool or traditional methods. With these remarks, I support this Bill."

* Mr. R. SRINIVASAN:—"Sir, referring to sub-clause (1) of section 2, I find that the age of an adolescent offender is given as not less than 16 nor more than 21. It is not clear whether the age mentioned is only for males or for both the sexes. If it be for both, I should say the age for males should be between 16 and 21 years and for females between 12 and 17.

" As for section 4, sub-clause (1), the prison rules and regulations hitherto made by the Government being extremely hard so far as the depressed classes are concerned, the rules made for the purpose of carrying into effect the provisions of this Act must be laid before this House for discussion and any amendment, if necessary.

" Coming to section 7, sub-clause (2), I wish to substitute here the 'District Judge' for the 'Subdivisional Magistrate'.

" Then, in section 8, the minimum period mentioned in the first paragraph should be two years instead of three years.

" As regards sections 9, 15 and 16, provision should be made so that persons who come forward to take charge of an offender should make an application to the District Magistrate or to the District Judge. Such a person should bind himself not to employ the offender as his own servant or to make use of him for his personal benefit. The District Magistrate or the District

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Judge should satisfy himself that such an applicant is a fit and proper person to take charge of the offender and fulfil all the conditions. There are some persons who are on the look out for an opportunity to make such applications so that they may get the offender in their charge and utilize him for their own purpose. I have personal experience of this when I was in the service of the Union Government of South Africa. When I wanted a servant, I was told that one could not be had without a tip.

"Then, coming to section 12, it must be provided that the District Magistrate or the District Judge shall pass the sentence or discharge the offender within four days after the receipt of the proceedings from the committing magistrate, and the appearance of the offender before him. Arrangement shall be made within three days after passing of the sentence for the removal of the offender to a Borstal institution.

"With these remarks, I support the Bill."

The motion that the Bill be read in Council was put and carried.

The Secretary then read the short title of the Bill.

* The hon. Khan Bahadur MUHAMMAD USMAN SAHIB Bahadur :— "Sir, I now move that this Bill be referred to the Select Committee. After this motion is passed, I shall read out the names of the members of the Select Committee."

The hon. Mr. T. E. Moir :— "I second it."

The motion was put and carried.

* The hon. Khan Bahadur MUHAMMAD USMAN SAHIB Bahadur :— "Sir, I now move that the Select Committee do consist of the following gentlemen :—

- (1) The Advocate-General.
- (2) Diwan Bahadur P. Kesava Pillai.
- (3) " W. Vijayaraghava Mudaliyar.
- (4) " P. C. Ethirajulu Nayudu.
- (5) Mr. R. Madanagopal Nayudu.
- (6) " R. Srinivasa Ayyangar.
- (7) Rao Bahadur C. V. S. Narasimha Raju.
- (8) Diwan Bahadur M. Krishnan Nayar.
- (9) Mr. Ghose Mian Sahib.
- (10) " V. Hamid Sultan Marakkayar.
- (11) Rai Bahadur Sir K. Venkatareddi Nayudu.
- (12) Rao Bahadur V. T. Krishnama Achariyar.
- (13) Lieut.-Col. J. P. Cameron, I M.S.
- (14) Rao Bahadur C. Natesa Mudaliyar.
- (15) Mr. J. A. Saldanha.
- (16) " T. Adinarayana Chettiyar.
- (17) " A. Ramaswami Mudaliyar.
- (18) " M. Ratnaswami.
- (19) Sir James Simpson, Kt.
- (20) Rao Bahadur M. C. Raja.
- (21) Mr. C. V. Venkataramana Ayyangar.
- (22) The hon. the Mover."

The hon. Mr. T. E. Moir :— "I second it."

The motion was put and carried.

* The hon. the PRESIDENT :— "I hereby appoint the hon. the Home Member as Chairman of the Select Committee."